

filed in the District Court of the United States libels praying seizure and condemnation of 590 boxes of tullibeas at New York, N.Y., alleging that the article had been shipped in two consignments, on or about July 31 and August 3, 1931, respectively, by the Manitoba Cold Storage Co., from Winnipeg, Manitoba, into the State of New York, and charging adulteration in violation of the Food and Drugs Act.

The libels alleged that the article was adulterated in that it consisted wholly or partly of a filthy, decomposed, or putrid animal substance, and in that it consisted of portions of animals unfit for food.

On November 28, 1931, Sigurd V. Sigurdson, New York, N.Y., appeared as claimant for the property and filed answers denying the adulteration charge. On January 12, 1933, the two cases were consolidated and the evidence on behalf of the Government and claimant was submitted to the court, sitting as a jury of one. At the conclusion of the testimony and the arguments of counsel, both the Government and claimant moved for a directed verdict. The case was adjourned for submission of briefs in support of the motions and having come on for hearing on February 21, 1933, the Government's motion was granted in the following memorandum opinion (F. J. Coleman, J.):

"Without repeating the statement of specific facts made by the court at the close of the trial, the question presented is whether under the Food and Drugs Act of June 30, 1906 (21 U.S.C., secs. 1 to 15), raw fish infested with parasitic worms should be condemned and forfeited in the absence of proof that the parasites would be injurious to the consumer or would impair the taste of the fish, but where it appears that an ordinary person would have a strong revulsion against eating such fish if aware of the presence of the worms, and where it further appears that only an experienced person would discover them. The worms themselves are threadlike structures difficult to identify, but they are surrounded by a quantity of thick, greenish yellow fluid unpleasantly suggestive of pus, which consists of broken-down fish tissue and to some extent the excreta of the worms. This fluid would readily be observable by anyone eating the fish; but unless he knew its origin, it would probably be unobjectionable.

"The Food and Drugs Act (title 21, U.S.C.) bans adulterated foods in foreign and interstate commerce and section 8, subdivision 6, provides that food shall be deemed adulterated 'if it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance or any portion of an animal unfit for food whether manufactured or not, if it is the product of a diseased animal or one that has died otherwise than by slaughter.'

"It seems to me that the fish in question come within the scope of that subdivision and are not excluded by the absence of proof that their condition would impair the health of the consumer or the flavor of the fish. The subdivision does not expressly prescribe such requisite and the courts have held that it does not imply one (*Knapp v. Callaway*, 52 Fed. (2d) 476; *A. O. Anderson & Co. v. U.S.*, 284 Fed. 542). While the statute is primarily concerned with the health of the consumers, it might well ban 'filthy' or 'decomposed' animal matter or the 'product of a diseased animal' without direct or scientific proof of danger to health. The aesthetic guide frequently precedes the scientific one and the Government might wisely ban food which runs counter to it in the categories mentioned.

"The fact that most consumers would not discover the worms and would, therefore, not have their feelings affronted is of no consequence because were it otherwise, the statute would not be needed. The statute is largely intended to protect those consumers who would not be in a position to observe the defect in the food.

"Verdict is directed for the Government. Settle order on notice."

On March 1, 1933, judgment was entered condemning the product and ordering that it be destroyed by the United States marshal.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20811. Adulteration of tomato catsup. U. S. v. 106 Cases of Tomato Catsup. Default decree of condemnation, forfeiture, and destruction. (F. & D. no. 27910. I. S. no. 47512. S. no. 5927.)

This case involved a quantity of tomato catsup that contained excessive mold.

On March 11, 1932, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure

and condemnation of 106 cases of tomato catsup at Omaha, Nebr., alleging that the article had been shipped in interstate commerce on or about May 23, 1931, by Stokely Bros. Co., from Whiteland, Ind., to Omaha, Nebr., and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Ruby Brand * * * Tomato Catsup Fame Canning Company, * * * Louisville, Ky."

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed vegetable substance.

On February 15, 1933, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20812. Misbranding of cottonseed meal. U. S. v. The Greenville Cotton Oil Co. Plea of guilty. Fine, \$150. (F. & D. no. 27549. I. S. no. 18320.)

This case was based on the interstate shipment of cottonseed meal that was short weight.

On May 9, 1932, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States an information against the Greenville Cotton Oil Co., a corporation, Greenville, Tex., alleging shipment by said company in violation of the Food and Drugs Act as amended, on or about January 23, 1931, from the State of Texas into the State of Kansas, of a quantity of cottonseed meal that was misbranded. The article was labeled in part: (Tag) "100 Lbs. Net Weight * * * Superior Quality * * * Distributed by Superior Cake & Meal Co., Kansas City, Mo."

It was alleged in the information that the article was misbranded in that the statement "100 Lbs. Net Weight", borne on the tag, was false and misleading, and for the further reason that the article was labeled so as to deceive and mislead the purchaser, since the sacks contained less than 100 pounds net. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On February 6, 1933, a plea of guilty to the information was entered on behalf of the defendant company and the court imposed a fine of \$150.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20813. Adulteration and misbranding of canned salmon. U. S. v. 247 Cartons of Canned Salmon. Tried to the court. Judgment of condemnation and destruction. (F. & D. no. 25346. I. S. no. 8806. S. no. 3614.)

This case involved an interstate shipment of canned salmon, samples of which were found to be tainted or stale. A portion of the article was not pink salmon as labeled, but was chum salmon.

On November 20, 1930, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 247 cartons, each containing 48 cans of salmon, remaining in the original unbroken packages at Pittsburgh, Pa., alleging that the article had been shipped in interstate commerce into the State of Pennsylvania, on or about August 28, 1930, by E. H. Hamlin Co., from Seattle, Wash., and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Silver Sea Brand Pink Salmon * * * Packed for West Sales, Inc., Seattle."

It was alleged in the libel that the article was adulterated in that it consisted in part of a decomposed animal substance.

It was further alleged in the libel that a portion of the article, identified by code mark, was misbranded in that the statement, "Pink Salmon" on the label, was false and misleading and deceived and misled the purchaser,

On December 9, 1930, M. E. Heller and Samuel Perrin, copartners, Pittsburgh, Pa., appeared and filed a claim and answer. The case came on for trial before the court on June 5, 1931. Evidence for the Government and claimant having been introduced and arguments of counsel heard, the court took the case under advisement and on April 27, 1932, handed down the following opinion (Gibson, D. J.):